

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
2000 Biennial Regulatory Review --	)	CC Docket No. 00-229
Telecommunications Service Quality	)	
Reporting Requirements	)	

**Comments of Covad Communication Company**

Covad Communications Company (Covad), by its attorney, hereby submits comments in the above-referenced docket. Covad is the nation's leading provider of competitive broadband services using digital subscriber line (DSL) technology. Covad is a facilities-based provider that offers service by purchasing unbundled network element (UNE) loops, UNE linesharing, and collocation space and by interfacing with incumbent local exchange carrier (LEC) operations support systems (OSS).

By all accounts, the future of competition in the local telecommunications marketplace is perilous at best – and in danger of further erosion. In the DSL sector in particular, the recent exit of several players – Digital Broadband, Jato, HarvardNet, to name a few – should, indeed must, cause this Commission to question what it can do to protect those remaining competitors to ensure that consumers continue to have a choice of telecommunications providers. The choice is simple: take concrete steps to ensure that incumbent LECs are fulfilling their obligation to permit local competitors to enter

once-monopoly territories, or risk further erosion of competition and failure to fulfill the congressional mandate to promote competition and market entry.

In this proceeding, the Commission has an unprecedented opportunity to more effectively satisfy its statutory mandate to encourage the deployment of advanced services by all providers. In particular, the proposals the Commission has made in the Notice – to streamline the reporting requirements imposed on incumbent LECs to a few core categories of customer-affecting service – presents an ideal opportunity to police the incumbents’ market-opening behaviors. Specifically, the Commission can utilize these core performance metrics to monitor the wholesale operations of incumbent LECs in a manner that ensures the ongoing viability of facilities-based competitors.

**The Commission should require incumbent LECs to report on their performance to all of their customers – both retail end user customers and wholesale carrier customers**

In the Notice, the Commission proposed to streamline the retail performance metrics that incumbent LECs must submit pursuant to the Commission’s ARMIS reporting requirements. Specifically, the Commission proposed:

to retain reporting for the following measures: (1) the percentage of installation appointments that are missed; (2) the time it takes to install service; (3) the percentage of lines that have problems, including out of service lines; (4) the time it takes to have out of service lines repaired; (5) the percentage of repair appointments that are missed; and (6) the time it takes to repair service.<sup>1</sup>

Covad offers no comments on whether the specific metric streamlining measures proposed by the Commission as to incumbent LEC retail performance are appropriate. Rather, Covad focuses on the broader categories of reporting that the Commission has

made clear it intends to preserve: on-time service installation, quality of service, and repair and maintenance timeliness. As the Commission well knows, these are the same categories of UNE provisioning and repair and maintenance that are at issue in every section 271 proceeding. In addition, these exact issues have been raised in enforcement proceedings before the Commission. This rulemaking thus provides the Commission an incredible opportunity to streamline its section 271 and enforcement processes, end the “he said – she said” battle of data reconciliation, and facilitate effective policing of the competitive marketplace.

In the Notice, the Commission makes note that “in the section 271 context, the issue of whether disparities in performance are due to conduct of the BOC or competitors has been a fact-intensive, highly contested issue.”<sup>2</sup> The arena of wholesale data reconciliation is the most difficult factual issue that faces the Commission with each section 271 proceeding. Requiring incumbent LECs to report wholesale performance pursuant to already-defined metrics would significantly alleviate the strain on the Commission and commenting parties seeking to evaluate the BOCs’ performance in section 271 proceedings. Thus, the Commission could streamline its current performance requirements by reducing the number of metrics required, while at the same time ensure that all incumbent LEC customers are covered by the metrics. End users are retail customers of the incumbents, but competing carriers like Covad are wholesale customers of the incumbents. By failing to require quality of service reporting for wholesale customers, the Commission leaves competitive LEC end user customers without a remedy for poor incumbent wholesale performance.

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<sup>1</sup> NPRM at para. 16.

<sup>2</sup> NPRM at para. 35.

If a wholesale reporting requirement were in place, the Commission could require incumbent LECs to report on wholesale performance in a regular and defined manner – giving the Commission a “big picture” view of incumbent wholesale performance that sporadic, state by state performance reports cannot provide. These wholesale performance reports would come to the Commission via the same format as the retail reports. For example, “percentage of missed installation appointments” would report on percentage of missed xDSL loop installation appointments. “Installation intervals” would report on the interval for xDSL loop installation. “Percentage missed repair appointments” would report on the percentage of time an incumbent LEC failed to meet a repair appointment for an out of service loop. In sum, these retail metrics could be easily applied to incumbent LEC wholesale operations, and would provide the Commission valuable insight into the incumbents’ satisfaction of their market-opening obligations. Without such information, the Commission will have no means to gauge the compliance of incumbents with such obligations, short of specific adjudications on a state-by-state basis, as with section 271 applications.

There is no question that the Commission should involve itself more actively in the crucial issue of incumbent compliance with their 1996 Act obligations. Because the Commission seeks, through these performance metric reporting obligations, to ensure that consumers are given timely and functional access to telecommunications services, the Commission should utilize such metrics to embrace both the retail and wholesale operations of incumbent LECs. Consumers suffer harm with lapses in incumbent wholesale performance as much as they do with retail lapses – poor performance by an

incumbent's wholesale operation twice denies consumers who seek to switch from incumbent to competitors access to quality service.

The Commission must require monthly reporting of wholesale operations of those incumbent LECs subject to section 251(c)(3) of the Act, pursuant to the provisioning and repair and maintenance metrics already in place. There are certain minor modifications that must be made to reflect differences in business rules that must be applied to such metrics, but that work has already been done and can be readily adopted by this Commission. In New York, a carrier-to-carrier working group, consisting of competitive and incumbent negotiants, has established specific rules and metrics related to wholesale performance. Indeed, this Commission approved of the process and the metrics developed through it in the *Bell Atlantic New York Section 271 Order*. The Commission should utilize the loop and linesharing metrics developed in New York, and require incumbent LECs to report pursuant to those metrics on a monthly basis for each state. The Commission must also, in order to permit carrier and Commission policing of the accuracy of such reports, require incumbent LECs to disaggregate performance by competitive LEC customer. Recent enforcement actions demonstrate, sadly, that incumbent LECs cannot be trusted to report on their own performance without verification of the accuracy of those reports.

**The Commission must not impose retail reporting requirements on facilities-based CLECs**

Covad purchases UNEs from incumbent LECs in order to provide DSL service to ISPs and end users. As a result, Covad is dependent on the performance of the incumbent LEC in delivering a loop to Covad. Every day that an incumbent LEC delays in providing a loop to Covad is a day that Covad cannot provision service to its end user.

Indeed, the principal variable in Covad's ability to deliver on-time service to its customers is the regular multi-week delays in loop delivery that Covad must suffer.

As the Commission recognized in the Notice, carriers like Covad that rely on UNE loops "have no control over the service quality of the resold service or the purchased elements, which may impact their service to retail customers."<sup>3</sup> Imposing reporting requirements on facilities-based carriers like Covad would serve to punish them for obstacles to service delivery that are solely within the control of the incumbent LEC. This would have two severe consequences. First, consumers who rely on service quality reports in choosing a telecommunications provider would see poor performance results – results that are in no way the fault of the competitive LEC. Such results would paint an unfair and inaccurate portrait of competitive LECs' service quality. Second, and perversely, the Commission would actually provide an incentive for incumbent LECs to provide poor UNE provisioning service to their competitors. By further delaying loop provisioning, incumbent LECs would ensure that the end-user performance that competitive LECs report to the Commission would be poor. Indeed, the incumbent LEC could control its loop delivery practices to ensure that competitors could never beat the performance of the incumbent's own retail DSL operation. Further, the incumbent LEC could subject its competitors to enforcement action by the Commission or state commissions, simply by providing poor loop delivery and delaying facilities-based competitors' ability to provide timely service to their customers.

The Commission would also impose a harsh burden on competitive LECs like Covad if it were to require collection and dissemination of such information.<sup>4</sup> Indeed, the

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<sup>3</sup> NPRM at para. 32.

<sup>4</sup> NPRM at para. 23.

burden of collection would far outweigh any benefits gained from such an obligation. Covad does not have the systems and procedures in place to collect and report on the data that incumbent LECs have had a longstanding obligation to collect. Thus, the Commission would impose enormous costs on competitive LECs – at a time when most of these companies are struggling to survive – while imposing no such costs on incumbents. Such regulatory costs are not properly imposed on entities that can ill-afford the undertaking. Because facilities-based competitive LECs have such a small percentage of the overall market, there is little harm in refusing to impose such a large burden on these carriers. Finally, competitive LECs have an incentive to provide quality service that incumbent LECs do not – upstart carriers without the embedded monopoly base of customers must offer quality service in order to attract customers. The monopoly incumbents do not have the same incentive, and thus service quality reporting is of vital importance for incumbents. Indeed, as noted above, incumbents would have the perverse incentive and ability to skew competitive LEC performance data simply by continuing the practice of discriminatory UNE provisioning.

The Commission has historically exempted smaller carriers from the reporting requirements it imposes on larger incumbent LECs.<sup>5</sup> The logical theory behind this exemption is that larger carriers can better saddle the expense of such data collection, and most incumbent carriers (such as the BOCs) already have similar obligations at the state level that necessitate such data collection even in the absence of a federal requirement. Covad and other small facilities-based carriers do not have existing obligations to collect such data, either at the state or federal level, and the imposition of a new requirement that they do so would be an enormous burden. Given the direct and predictable impact of

incumbent LEC UNE performance on the performance of their competitors, such data would be virtually meaningless to the Commission. More importantly, by forcing competitive carriers to disclose the extent to which they are harmed by incumbents and forced to delay service to consumers, the Commission would actually promote the service of incumbents over competitors in the minds of consumers

Finally, the Commission asks in the Notice whether the Commission could devise a way to “take into account problems due to the conduct of the incumbent so that consumers would receive an accurate picture of the service quality provided by different carriers.”<sup>6</sup> Unfortunately, the answer is no. Consumers investigating the quality of service provided by carriers do not care whether the delay in service provisioning is caused by the incumbent LEC – they only care how long service takes to provide. Should the Commission require facilities-based competitors who rely on UNEs to report on service quality, incumbent LECs would seize on the opportunity to effectively impose negative publicity on their competitors, further eroding competitive opportunities to gain market share. Consumers do not care that competitive LEC quality of service is due to incumbent LEC anticompetitive behavior. They will simply order service from the incumbent.

## **Conclusion**

For the reasons stated herein, the Commission should (1) require incumbent LECs to report on a monthly basis their wholesale performance for the above-referenced categories of service; and (2) refrain from imposing performance metric reporting obligations on facilities-based competitive LECs for the reasons discussed herein.

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<sup>5</sup> NPRM at para. 29.

<sup>6</sup> NPRM at para. 32.

Respectfully submitted,

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